

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

SUSAN M LAUGHLIN  
4123 DARTMOOR RD  
AMES IA 50014

CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORE  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-05225-DT  
OC: 09/26/04 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Susan M. Laughlin (claimant) appealed a representative's May 10, 2005 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 7, 2005. The claimant participated in the hearing. Charlotte Miller appeared on the employer's behalf and presented testimony from one other witness, Heidi Smith. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 17, 2004. She worked full time as store manager of the employer's Slater, Iowa, convenience store. Her last day of work was April 20, 2005. The employer discharged her on April 21, 2005. The reason asserted for the discharge was overpaying an employee for time not worked.

For the pay period ending April 15, 2005, the claimant's computations resulted in Ms. Smith, a full time cashier at the store, being paid for 34 hours. Ms. Smith actually only worked nine hours that week, as she was out of town. The claimant had intended on paying Ms. Smith for 15 hours, the nine hours worked, plus six hours Ms. Smith had previously worked after signing out. The claimant had written the six hours in on the work schedule as three hours on two mornings during the time Ms. Smith was out of town to remind herself that she was going to make up the previously unpaid time. Before that paycheck was issued, Ms. Miller, the area supervisor, noticed that it was for that many hours, and as she had known that Ms. Smith had been out of the store that week, questioned the payment.

Ms. Miller then audited the paychecks for Ms. Smith for the year, and found that for the week of January 24, 2005, Ms. Smith had been sick all week but yet had been paid for 40 hours. Initially, the claimant had believed that Ms. Smith had been entitled to sick pay; however, Ms. Smith's full time status had been fluctuating in the employer's records, and for that week, Ms. Smith had not been entitled to sick pay benefits. However, the claimant included 40 hours as regular time for payment for Ms. Smith that week. The error had not been discovered in a prior audit of the records.

Due to these payroll overpayments, the employer discharged the claimant. There had not been any prior disciplinary issues relating to the claimant.

The claimant established an unemployment insurance benefit year effective September 26, 2004. She filed an additional claim effective April 24, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer's interest, or
    2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the payroll overpayments to Ms. Smith. Misconduct connotes volition. Huntoon, supra. There is no

evidence of collusion between Ms. Smith and the claimant, and there is no evidence of any motive the claimant might have to intentionally pay Ms. Smith money to which she was not entitled. Under the circumstances of this case, the claimant's payroll errors were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code section 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code section 96.19-3. The claimant's base period began April 1, 2003 and ended March 31, 2004. The employer did not employ the claimant during this time, and, therefore, the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's May 10, 2005 decision (reference 02) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

ld/tjc